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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEJANDRO PEREZ,

Defendant and Appellant.

B272087

(Los Angeles County  
Super. Ct. No. 6PH00900)

APPEAL from an order of the Superior Court of Los Angeles County. Jacqueline Lewis, Judge. Affirmed.

Dave Linn, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

Alejandro Perez (defendant) appeals from a trial court order revoking his parole. Defendant was charged with violating his parole by associating with “prohibited or non-gang validated persons.” The trial court found defendant in violation of the terms of his parole and revoked the parole. Defendant contests the trial court’s findings, arguing there was insufficient evidence that he associated with a member of a criminal street gang as that term is defined in Penal Code section 186.22.<sup>1</sup> Defendant further argues that there was insufficient evidence that he actually associated with a criminal street gang member or associate.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The People filed a petition for parole revocation on February 4, 2016.<sup>2</sup> Defendant was charged with violating the terms of his parole by means of “associating with prohibited or non-gang validated persons.” Defendant’s conditions of parole included a condition that he not “contact or associate with a person [he knew] or reasonably should know to be a member or associate of a prison gang, disruptive group, or street gang.” A hearing was noticed for February 8, 2016. Defendant denied the allegation.

A probable cause hearing took place on February 16, 2016. The court found that the prosecution met its burden and probable cause existed that defendant violated the terms and conditions of his parole.

The contested revocation hearing took place on March 14, 2016. Defendant’s parole agent, Mark Muckenthaler, testified that the clause alleged to have been violated was No. 57 in defendant’s terms of parole, which prohibits defendant from associating with persons whom defendant should reasonably know are gang members. Defendant had previously been found in violation of this clause.

West Covina police officer Esteban Mendez was the arresting officer in the incident triggering the revocation proceeding. On January 29, 2016, at approximately

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> Defendant’s underlying conviction was for first degree residential burglary in violation of section 459. Defendant had served a two-year prison term prior to being placed on parole.

7:00 p.m., Officer Mendez was driving his police vehicle in the parking lot of an apartment complex when he recognized a yellow El Camino in the parking lot. Due to prior contacts, Officer Mendez knew that the yellow El Camino belonged to Jesse Delgado, an admitted member of the Crazy Wicked Locos (CWL) gang. Officer Mendez then observed defendant, also an admitted CWL gang member, walking towards Delgado's vehicle. Defendant was within five feet of Delgado's El Camino, and steadily approaching the driver's side door. Defendant and Delgado were facing each other. Officer Mendez illuminated Delgado's vehicle with his spotlight. Defendant looked in the direction of Officer Mendez, appearing startled. Defendant then immediately turned around and went back in the direction he was coming from. Officer Mendez testified that defendant's stride was "like a run. It appeared to me that he was going to run." Officer Mendez parked his vehicle and yelled at defendant to stop, which he did.

Officer Mendez testified that he was familiar with the CWL gang. Both Delgado and defendant had previously admitted membership in the CWL gang, and both had gang tattoos associated with CWL. CWL has between 30 and 40 members. Prior to 2013, CWL was identified as a "tagging crew," that in 2012 and 2013, evolved into a "territorial group." Within that time, CWL was also "putting in work," or "committing crimes for the benefit of the gang as an individual or as a group. Collectively, it promotes fear and intimidation within the community." Mendez explained, "So currently now as they're committing crimes, they're tagging, the way they're promoting, their recruiting is similar to any Sureno or South Side gang. At this point, it is evolving." Mendez clarified that he would label them as "a hybrid criminal street gang because they're still evolving. However, they are acting as a Sureno-based gang." Mendez believed that CWL was an applicant to membership in the Surenos or the Mexican mafia or both.

After hearing evidence, the court found that it was more likely than not that defendant violated the terms and conditions of his parole by associating with a prohibited gang member. Parole supervision was revoked, to be restored upon completion of jail

sanctions. Defendant received a confinement term of 180 days with 92 days of custody credit.

On March 18, 2016, defendant filed his notice of appeal from the order revoking his parole.

## **DISCUSSION**

### **I. Standard of review**

In order to revoke parole, the finder of fact must determine by a preponderance of the evidence that the parolee violated the condition alleged in the petition for revocation. (*Morrissey v. Brewer* (1972) 408 U.S. 471, 488-490; *People v. Rodriguez* (1990) 51 Cal.3d 437, 441; *In re Prewitt* (1972) 8 Cal.3d 470, 473-474.) Trial courts have broad discretion in determining whether a probationer has violated any of the conditions of probation. (*Rodriguez, supra*, at p. 443.) The trial court's decision will only be reversed on appeal if the defendant can establish that the trial court abused its discretion. (*Ibid.*)

### **II. The evidence supports the trial court's determination that CWL was a criminal street gang**

Defendant argues that the evidence presented by the People did not establish that any member or associate of CWL ever committed any of the enumerated offenses set forth in section 186.22. Therefore, defendant argues, it was not established that CWL is a criminal street gang within the meaning of that statute. Defendant contends that it was therefore error to revoke defendant's parole based on his alleged association with CWL.

We disagree, and find that there was sufficient evidence to support the trial court's determination that CWL was a criminal street gang for the purposes of this parole revocation proceeding.

#### ***A. Applicability of section 186.22***

Section 186.22 is part of the California Street Terrorism Enforcement and Prevention Act. Section 186.22 contains two main provisions, the first of which is a substantive offense in subdivision (a). Section 186.22, subdivision (b) is a sentencing enhancement. (*In re Nathaniel C.* (1991) 228 Cal.App.3d 990, 995-996; 1000.)

Section 186.22, subdivision (e) states that “[a]s used in this chapter, ‘pattern of criminal gang activity’ means the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the following offenses . . . .” The statute then lists 33 offenses which are qualifying criminal acts. Pursuant to section 186.22, subdivision (f), “[a]s used in this chapter, ‘criminal street gang’ means any ongoing organization, association, or group of three or more persons, . . . having as one of its primary activities the commission of one or more of the criminal acts enumerated” in the preceding paragraph. The enumerated offenses include assault with a deadly weapon, robbery, unlawful homicide, sale or manufacture of controlled substances, shooting at an inhabited dwelling, shooting from a motor vehicle, arson, witness intimidation, grand theft, theft of a firearm, burglary, rape, looting, money laundering, kidnapping, mayhem, torture, extortion, felony vandalism, carjacking, unlawful gun sales, unlawful concealed gun possession, death threats, vehicle theft, access card theft or counterfeiting, felonious fraudulent use of an access card, identity theft, wrongfully obtaining Department of Motor Vehicle credentials, and unlawful carrying of a loaded firearm. (§ 186.22, subd. (e).)

When a prosecutor is seeking to prove charges based on section 186.22, subdivision (a), or a sentencing enhancement under section 186.22, subdivision (b), it must be accomplished through competent evidence that the organization at issue is a criminal street gang as defined in the statute. (*In re Nathaniel C.*, *supra*, 228 Cal.App.3d at p. 1004.) This includes evidence that “a primary activity of the gang is one or more of the listed offenses.” (*Ibid.*) Commission of crimes that are not specifically enumerated in the statute are not evidence of primary activity sufficient to qualify the group as a criminal street gang for the purposes of conviction or sentencing enhancement. (*People v. Sengpadychith* (2001) 26 Cal.4th 316, 323 [“evidence of either past or present criminal acts listed in subdivision (e) of section 186.22 is admissible to establish the statutorily required primary activities of the alleged criminal street gang”].)

Defendant has cited no law, for the purposes of parole revocation, requiring that a prosecutor must prove that an alleged criminal street gang qualifies as such under section

186.22. Section 186.22, subdivision (f) specifies that “[a]s used in this chapter, ‘criminal street gang’ means any ongoing organization . . . having as one of its primary activities the commission of one or more of the criminal acts enumerated in [the previous subdivision].” (Italics added.) This limiting language suggests that the definition set forth in section 186.22 is not universally applicable to situations falling outside of the California Street Terrorism Enforcement and Prevention Act. Furthermore, parole revocation proceedings are different in nature from criminal prosecutions, “and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations.” (*Morrissey v. Brewer*, *supra*, 408 U.S. 471 at p. 480.)

Defendant has not convinced this court that in a parole revocation proceeding based on the parolee’s association with a member of a criminal street gang, the prosecution must prove that the alleged criminal street gang meets the definition set forth in section 186.22. Instead, the prosecution was required to prove by a preponderance of evidence that defendant contacted or associated with “any person [he knew] or reasonably should [have known] to be a member or associate of a prison gang, disruptive group, or street gang.”<sup>3</sup> As set forth in detail below, Officer Mendez’s testimony was sufficient to prove a violation of that clause by a preponderance of the evidence.

We further note that defense counsel did not raise the issue of section 186.22 at the hearing. Officer Mendez testified repeatedly that members of CWL engaged in criminal

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<sup>3</sup> Both parties address the question of whether CWL might be categorized as a disruptive group. We decline to address that question as the prosecution took the position below that defendant had associated with a street gang. At the probable cause hearing, the prosecutor stated: “this is significantly more than just simply a disruptive group . . . seems to be pretty clear that it has been established that [defendant’s] involvement in the [CWL] is seen as criminal street gang activity.” However, regardless of the categorization of CWL, the prosecutor explained in closing arguments that defendant was on notice that associating with members of CWL violated the relevant clause of his parole. Defendant had previously been found in violation of this clause for associating with members of CWL, thus “it would be clear that he’s been told ‘you can’t associate with members of CWLs.’” The trial court agreed, noting that defendant had at least four prior violations for associating with CWL gang members or being within an area known as a gang hangout. Therefore, the court found that defendant “had plenty of notice that he was not supposed to be hanging with other [CWL] gang members.”

activity. Defense counsel failed to inquire of Officer Mendez whether CWL engaged in any of the crimes enumerated in section 186.22, subdivision (e).<sup>4</sup> Under the circumstances, defendant has forfeited his claim that the prosecution failed to present evidence that CWL meets the definition of criminal street gang set forth in section 186.22.

***B. The evidence supported the trial court's decision***

To prove that defendant violated the condition alleged in the petition for revocation, the prosecutor was required to make that showing by a preponderance of the evidence. That condition prohibited defendant from contacting or associating with “any person [he knew] or reasonably should [have known] to be a member or associate of a . . . street gang.” Substantial evidence in the record supports the trial court’s conclusion that CWL is a criminal street gang.

Officer Mendez testified that both Delgado and defendant were admitted members of the CWL gang. Mendez was familiar with the organization. When introduced to the field training program, Mendez worked in an area that was controlled by CWL, where he came across several members of the gang. He knew their local hangouts and the areas where they congregated and intimidated local community members. Mendez coordinated a multi gang-association search warrant, identifying several CWL gang members. He established a gang pattern or “pattern of criminal activity” associated with CWL. Officer Mendez became familiar with CWL’s ideology, history, its ranks and numbers, and the way the organization was recruiting. Delgado and defendant both had tattoos similar to those of other CWL members.

Under cross-examination from defense counsel, Officer Mendez revealed that CWL was in the process of evolving from a “tagging crew” to a gang. He stated that they were targeting a specific area of West Covina where they had their meetings. They

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<sup>4</sup> While defense counsel cross-examined Officer Mendez on the evolution of the gang from a tagging crew to a full-fledged criminal street gang, defense counsel did not inquire as to the precise types of crimes that the gang was committing or whether those crimes were enumerated under section 186.22, subdivision (e).

were “putting in work,” which means that they were “committing crimes for the benefit of the gang” for the purpose of promoting “fear and intimidation within the community.” This was how the organization progressed into a gang.

Under further questioning, Officer Mendez explained that CWL was striving to be a “Sureno gang or Southern gang.” He stated: “The process is, as I mentioned earlier, is putting in work, getting that respect as a group and as an individual. They have several members that have been up -- that have gone to prison that are claiming South Sider, Sureno status.”

In Officer Mendez’s opinion, they were a hybrid criminal street gang because they were still evolving, but were “acting as a Sureno-based gang.” When asked how to distinguish a tagging crew from a gang, Officer Mendez responded that one way was to evaluate “the types of crimes that they’re committing. Gang members commit crimes for the benefit of the gang.” In his opinion, CWL had evolved from a tagging crew to an organization that is “putting in work when they’re committing crimes.”

From this evidence, the trial court was justified in concluding that CWL was a criminal street gang. Although Officer Mendez was not asked what specific crimes CWL members were committing, it was clear from his testimony that CWL was committing crimes beyond misdemeanor vandalism.<sup>5</sup> Members of CWL had gone to prison after committing crimes for the benefit of the gang. Thus, it was a fair inference for the trial court to make that members of CWL had committed crimes that qualified the organization as a criminal street gang. No abuse of discretion occurred.

### **III. The evidence supports the finding that defendant associated with a CWL member**

Defendant next argues that even if CWL were a criminal street gang, there is no evidence that defendant actually associated with a CWL member or associate. Officer Mendez testified that he saw defendant approaching a car driven slowly by Delgado in a parking lot. Officer Mendez used his spotlight to illuminate the vehicle, which caused

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<sup>5</sup> Defendant asserts, without citation, that “tagging” is misdemeanor vandalism.



defendant to turn around. Defendant then moved in the other direction. Officer Mendez did not see either defendant's or Delgado's mouth moving. In other words, defendant argues, even if Delgado were a gang member, no association ever occurred.

We find that the evidence supports the trial court's conclusion that defendant had contact with or associated with Delgado. Officer Mendez testified that defendant was within five feet of Delgado's car and "steadily approaching." Defendant was moving towards the vehicle at a "slow trot." By the time Officer Mendez illuminated Delgado's car, the two individuals were facing each other and defendant was coming up to the driver's side door.

Once Officer Mendez illuminated the vehicle, defendant turned around and started to move rapidly in the other direction. This behavior suggests defendant's knowledge that the activity he was engaging in was prohibited. In fact, the court emphasized that when Officer Mendez "lit up the car," defendant "did an about-face and went in the other direction."

The above evidence is sufficient to justify the trial court's determination that the interaction between defendant and Delgado on the evening of January 29, 2016, was a prohibited association between defendant and a known gang member. Defendant has presented no legal authority that direct evidence of actual communication is required.<sup>6</sup> Defendant's close proximity to Delgado, along with his apparent intention to either get into Delgado's vehicle or interact with him, is evidence of a prohibited association. No abuse of discretion occurred.

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<sup>6</sup> We note that the trial court was entitled to infer that defendant's meeting with Delgado in the parking lot of the apartment complex was not a chance encounter, and that the two likely engaged in some communication at an earlier time in order to determine the time and location to meet.

**DISPOSITION**

The order is affirmed.

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\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, P. J.  
BOREN

\_\_\_\_\_, J.  
ASHMANN-GERST